

Oregon Water Resources Commission
Meeting
June 7, 2002
Salem

Members

Tyler Hansell
Ron Nelson
Dan Thorndike
Susie Smith
Jay Rasmussen
Jim Nakano

Staff

Paul Cleary
Meg Reeves
Shannon O'Fallon
Adam Sussman
Diane Addicott
Debbie Colbert
Cindy Smith
Tom Paul
Dave Jarrett
Barry Norris
Bill Fujii
Renee Moulun
Dwight French
Juno Pandian
Bruce Sund
Laura Snedaker
Kyle Gorman
Fred Lissner
Mike Ladd
Bruce Moyer
Dick Bailey
Ken Lite
Kimberly Grigsby
Greg Nelson
Jerry Grondin
Mike Zwart

Others

Brad Harper
Ryan Smith
Anita Winkler
Roger Prowell
Sharon Beck
Ray Hartwell
Sharon Livingston
Doug Myers
Bill Kennedy
Glenn Barrett
Pete Test
Steve Shropshire
Martha Pagel
Kimberley Priestley
Karen Russell
Aubrey Russell
Rick Kepler

Written material submitted at this meeting is part of the official record and on file at the Oregon Water Resources Department, 158 12th Street NE, Salem, Oregon 97301-4172. Audiotapes of the meeting are on file at the same address.

A. Commission Meeting Minutes

The minutes of the April 11-12, 2002, meeting were offered to the Commission for their approval. Nelson moved to approve the minutes as presented; seconded by Hansell. All voted approval.

B. Commission Comments

Hansell thanked Cleary and staff for the interesting session the day before with the Environmental Quality Commission (EQC). He said he recently spoke on Phase I through III of the Umatilla Project to participants of the Leadership Oregon Program.

Smith also thanked staff for the previous day's meeting with the EQC saying that the presentations were very helpful and interesting. She would like to see that level of coordination continue. Smith said she has also observed a much greater degree of coordination on flow management issues this summer among the U.S. Army Corps of Engineers, State agencies, and local government relating to reservoir discharge.

Nelson said he appreciated the previous day's meeting with the EQC and suggested holding meetings with the Fish and Wildlife Commission and the Land Conservation and Development Commission. He said that the Deschutes Resource Conservancy will soon have a person on staff to run the water exchange. In April he served as hearing officer at a public hearing in Bend to receive testimony on proposed Deschutes ground water administrative rules; over 200 people were in attendance. At that hearing Nelson said he heard comments on plans for new development that would include numerous exempt domestic wells and that their cumulative impact is unknown and could cause problems in the area.

Rasmussen said that in early May he and Smith met Department staff in Corvallis to get a better understanding of Community Water Supply Work Group issues; the following week they met with stakeholder representatives of the Work Group. He believes that progress is being made.

Nakano said last week he participated in a tour of a pressurized irrigation system and also a wildlife pond water purification project. The water purification project involves moving return flows off farm land into a pond and then returning the water to the Owyhee River. Nakano said he asked the owner of the pond if WRD could monitor the flow coming in and out of the pond; the owner agreed that this would be a good idea.

Thorndike mentioned the large attendance at the Rogue Basin Water Issues for the 21st Century Seminar recently held at Southern Oregon University in Ashland. He said Watermaster Larry Menteer did a great job presenting specific issues faced by the Department in the Rogue Basin. Thorndike attended his first meeting of the Oregon Watershed Enhancement Board (OWEB) as representative of the Water Resources Commission. At the OWEB meeting funds were set aside to assist in the eventual removal of the Savage Rapids Dam and related watershed restoration.

C. Director's Report

Cleary briefly reviewed the written report of Department activities offered to the Commissioners.

He mentioned that Commissioner Smith recently suggested a way to approach our administrative rulemaking process by making findings in four different areas. The four areas include how the proposals reflect our statutory requirements; how they advance our mission of addressing Oregon's water supply and flow restoration needs; how they fit within our staff capabilities; and how they provide for adaptive management. These four areas will be addressed in rulemaking staff reports coming before the Commission.

Cleary announced that there will be a special meeting of the Commission on September 13, 2002, in Salem to consider adoption of the Deschutes Ground Water Mitigation rules.

D. Commission Discussion

This time was allotted for Commissioners to discuss the previous day's meeting with the Environmental Quality Commission and other topics of interest.

Smith said she is interested in the idea of consolidating some of the State's technical science-based staffing mentioned yesterday by Stephanie Hallock, Director of the Department of Environmental Quality. Thorndike agreed saying he is sure there is a desire to not duplicate efforts, but it's likely that most agencies don't have information about what others are pursuing.

Cleary mentioned some current efforts to alert people to what information technology is available and where to find it. This month the Department is hosting the Western States Water Council Information Management Conference. Counterparts from other states will be attending to share and discuss information technology. Another opportunity is the Oregon Geographic Information Council (OGIC) which meets regularly and includes natural resource and human resource agencies. The Oregon Watershed Enhancement Board (OWEB) has been directed by the legislature to work on monitoring and coordinating information services within the state. Cleary said it might be a good idea to invite OWEB Executive Director Geoff Huntington to a Commission meeting for an update on this project.

Cleary said staff will put together an information sheet for the next Commission meeting that describes what OGIC, OWEB, and others are doing in the area of shared information technology. Hansell suggested including the Tribes in this coordination of information. Cleary agreed with Hansell saying that staff recently met with the Umatilla Tribes to share the Department's water right data base; the Tribes are assembling a data base of their water uses.

Thorndike said the budget crisis helps focus the need for coordination and may prompt it; but on the other hand, each agency has their own individual budget that might limit the dollars available in sharing and coordinating information.

Smith said she hopes discussions will continue on strategic planning between DEQ and WRD. The previous day's presentation by Karen Tarnow and Dwight French on the intersection of water quality and quantity issues underscored the importance of this.

Rasmussen suggested there might be future reports on steps taken on various topics of coordination between DEQ and WRD staff as a result of yesterday's joint meeting.

E. Consideration of Exceptions and Issuance of Final Order on Instream Water Right Application IS-70606 in the Name of Oregon Department of Fish and Wildlife

The Commission was asked to consider exceptions filed by the intervenor WaterWatch of Oregon, the applicant Oregon Department of Fish and Wildlife (ODFW), and the protestant William R. McCormack (represented by attorney James Bailey) in a contested case proceeding on an instream water right for Bear Creek, tributary to the Crooked River in Crook County.

Commissioner Nelson declared a possible conflict in that the attorney for the protestant is employed by the same law firm used by Central Oregon Irrigation District.

Moulun introduced the parties to the proceeding — Attorney James Bailey representing the protestant William McCormack; Assistant Attorney General Shelley McIntyre representing ODFW; and Karen Russell representing WaterWatch of Oregon. Moulun distributed maps showing the area in question, and gave a brief background of the case. She said this water right would have a 1990 priority date that would be the most junior water right on the system; there would be no possibility that this instream water right would be met before the senior rights. The right would be slotted into the priority system, taking into account existing consumptive uses. Moulun explained the difference between consideration of instream water right applications and those for consumptive uses. She asked that the first page of the proposed final order (Attachment F of the staff report) be amended to show that Bear Creek is a tributary to the Crooked River.

Attorney James Bailey, representing Mr. McCormack, expressed concerns that the instream water right should not be granted for the following reasons: the application is based on outdated assumptions regarding the needs of redband trout; the Department did not follow statutory guidelines with regard to establishing the public interest; and the Department's processing of the application has taken too long. He also expressed concerns with the manner in which the contested case was conducted saying it was lengthy and frustrating. Bailey said that with so many years since the application was filed, ODFW should submit a new application based on current data.

Shelley McIntyre, Assistant Attorney General, spoke on behalf of the Oregon Department of Fish and Wildlife (ODFW). She reviewed the issues in the case and agreed that the proceeding was lengthy and frustrating with new issues continually being raised. McIntyre said the application for this instream water right states that the public interest would be providing required stream flows for the survival of redband trout, currently designated a sensitive species statewide by ODFW.

Karen Russell, WaterWatch of Oregon, spoke in support of approving the instream right. She said instream rights not only protect the remaining water supply in the stream, but keep the fish currently in the stream alive. To the extent that the instream water right exceeds what is physically now in the stream, it also serves as a management objective for trying to restore stream flows. She said WaterWatch supports the Department's final order with the added language on the front page clarifying that Bear Creek is a tributary to the Crooked River.

A short break was called by the Chairman. During the break Commissioners Hansell and Nelson spoke with the Assistant Attorney General; O'Fallon announced for the record that she gave no legal advice during this time.

Commissioner Smith moved to approve issuance of the minimum stream flow, authorize issuance of a Final Order substantially in the form of the Draft Final Order attached to the staff report, accepting the Director's recommendations to allow ODFW/WaterWatch Exceptions 2 through 7 and 9, and adding language to clarify that Bear Creek feeds into the Crooked River. The motion was seconded by Rasmussen. The motion passed with 5 votes; Hansell abstained.

F. Public Comment

Roger Prowell, City of Bend, thanked Commissioner Nelson for facilitating the public hearing on the proposed Deschutes mitigation rules in April. At that hearing, he said it seemed difficult for WRD staff to explain the meaning of mitigation. Prowell said that mitigation would get the Deschutes River to a more natural hydrograph, especially the middle Deschutes; and it would

allow municipalities to provide source water for future citizens. He said that listening to comments at the April hearing it was apparent that many of those attending are confused about how water works. As a result of that, the City of Bend played an active role in the Deschutes River Fest by demonstrating the uniqueness of the Deschutes Basin, the problems and the opportunities. The City of Bend has also budgeted money this year for education and conservation communication with local citizens. The population of Bend is still growing and the City must somehow produce additional water for its citizens.

Cleary explained that mitigation is tied to lessening the impact of some other activity; restoration is independent. Combined, the two will hopefully enhance flows beyond what one or the other could do individually. It is important for those funding restoration projects to know they are not funding activities that are lessening or off-setting impacts elsewhere, so mitigation must be kept separate from restoration.

G. Other Issues — Consideration of Petition for Withdrawal or Emergency Rulemaking in the Klamath Basin

Cleary introduced this item explaining that WaterWatch of Oregon and nineteen other organizations requested that the Commission either initiate rulemaking to close the Klamath and Lost River Basins to further appropriation by a basin program rule or take immediate action to withdraw from further appropriation all of the unappropriated surface and ground waters of those basins. Cleary said that taken as a whole, the petition, responses, and staff report give a good overview of the significant resources, and the complexities, concerns and challenges faced in the Klamath Basin. Many of the things being requested in the petition are already in effect — under the Commission's 1992 Water Allocation Policy there are no new direct flow rights being issued from the mainstem of the Klamath River or its tributaries that join the Klamath in Oregon. There have been no new claims to water accepted by the Department since the April 30, 1997, closure of the last adjudication claiming period. The only surface water that is available is for storage during the high flow/low use months of January through May.

Cleary explained that the staff recommendation in the written report has been revised to recommend that the Commission only deny the petition for emergency rulemaking, realizing there is no action required by statute or administrative rule on the request for withdrawal. Staff would meet with the petitioners and the water users to discuss ongoing ground water studies and surface water restrictions. Staff would then review our existing water availability and water allocation restrictions, and report back to the Commission in October.

Clery said the Department is expending some 20 percent of its annual budget addressing issues in the Klamath Basin (\$15 to 20 million over the last decade). It is clear that improving outreach and enhancing the public's understanding of staff activities in the Klamath Basin must be pursued. He would begin by meeting with the petitioners and reviewing the ground water presentation recently given to the Klamath Compact Commission and existing surface water restrictions. Re-instituting regular Alternative Dispute Resolution meetings in Klamath Falls would serve as an information forum and keep the basin interests updated on Department activities.

Public Comment on Item G

Karen Russell, WaterWatch, spoke in support of the petition and expressed her concerns about over-allocation of the basin while results of ongoing ground water studies are not yet known. She reviewed the specific requests made in the petition and distributed several hand outs.

Brad Harper, Water For Life, spoke against the petition and asked the Commissioners to show support for flexibility in helping Klamath Basin and Lost River Basin communities meet their water needs. Harper submitted his comments in writing.

Glenn Barrett spoke against the petition. He encouraged the Department and Commission to instead continue to work with local interest groups in the Klamath Basin and Lost River Basin to resolve water management issues.

Bill Kennedy spoke against the petition and encouraged the Commissioners to deny it. He shared information on the many collaborative efforts underway in the Klamath and Lost River Basins including an alternative dispute resolution process in Bonanza, and another on the adjudication of the waters of the Klamath Basin.

Martha Pagel, representing Glenn Barrett and Bill Kennedy, urged the Commission to deny the petition for withdrawal and rulemaking. She submitted her comments in writing.

Pete Test, Oregon Farm Bureau, spoke against the petition and recommended its denial.

Hansell moved to deny the petitioners' request for withdrawal under ORS 536.410 and emergency rulemaking under ORS 183.390 and 183.335; seconded by Nakano. All voted approval.

Commissioner Smith asked that more information be given at the October meeting on the Department's procedures for issuing conditioned ground water permits when it appears there could be an interface between ground water and surface water, and reviewing applications for surface water use even though the basin is over-allocated.

There being no further business to discuss, the meeting was adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant